

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:
TORTILLA, INC.
Debtor

Case No. 10-10966-s11

**EMERGENCY INTERIM ORDER FOR AUTHORITY TO USE CASH
COLLATERAL
AND ESTABLISHING ADEQUATE PROTECTION**

THIS MATTER comes before the Court on the stipulation between the Debtor, by and through its counsel, Cuddy & McCarthy, LLP (Daniel J. Behles, of Counsel) and the New Mexico Taxation and Revenue Department (“TRD”), by and through its counsel, Gary K. King, Attorney General of the State of New Mexico (James C. Jacobsen, Assistant Attorney General).

The parties agree and represent to the Court as follows::

1. Debtor filed its petition herein under Chapter 11 of the Bankruptcy Code on March 1, 2010, and is operating as a Debtor in Possession under §§1107 and 1108 of the Bankruptcy Code.
2. No Unsecured Creditors’ Committee has been formed at this time.
3. Debtor’s business consists of operating multiple restaurants in the Albuquerque, New Mexico metropolitan area, and related catering and retail and wholesale activities. Debtor operates under the trade name of “Garduno’s of Mexico”.
4. Debtor requires the use of cash collateral to continue the operation of its business. In the course of such operations, Debtors will incur various expenses in the ordinary course of business and expenses of this proceeding which must be paid in order to continue operations and in order to maintain and protect assets of the estate. Use of

cash collateral is necessary, among other things, to pay for labor, utilities, equipment repairs, inventory purchases, insurance, fuel, other expenses incurred in the ordinary course of the Debtor's business, and professional fees and expenses incurred in connection with this bankruptcy case. A copy of Debtor's tentative budget for the 60 days post-petition is attached hereto as exhibit A. Without authority to use cash collateral, the Debtor will be unable to make payroll, operate its business, or administer this bankruptcy case, and would be forced to cease operations.

5. On March 2, 2010, with the consent of TRD, the Court entered an Order authorizing the debtor to pay the payroll due Wednesday, March 3, 2010, which consists of hourly wages due all employees for pre-petition services. The agreement and budgets reflected by this order will authorize the payment of future payrolls which include, in part, payment for wages and benefits earned pre-petition, as well as post petition expenses.

6. The only creditor which is believed to have a claim which is secured by cash collateral is TRD.

a. Counsel for the TRD has informed counsel for the Debtor that tax liens have been filed against the debtor as shown on Ex. B attached hereto.

b. As such, the TRD has a perfected statutory lien on all of the Debtor's property, including its inventory and the proceeds generated by the sale thereof.

c. Debtor believes that no other parties claim a cash collateral interest.

7. Counsel for TRD has agreed to stipulate to Debtor's use of cash collateral, so long as the interests of TRD are protected herein as follows:

a. Debtor will, and hereby does, grant post-petition, continuing and replacement

liens on post- petition inventory, accounts, equipment, intangibles, proceeds and profits to secure the use of cash collateral, with such liens on post-petition assets to be subject to any claims, defenses or avoiding powers that the pre- petition lien of TRD might be subject to, and with such post-petition liens having the same validity and priority as the liens existing at the time of the filing of the petition. No recordation or other filing is required to perfect such post-petition liens.

b. Debtor will make adequate protection payments to the TRD in the amount of \$12,591.94 per month, payable on the 20th of each month. The first of such payments will be due on April 20, 2010.

8. It is necessary to grant this authority on an interim emergency basis, subject to the notice and objection provisions set forth below, to preserve the going concern value of the debtor's business and to preserve the value of the assets of the estate for all creditors.

IT IS THEREFORE ORDERED that:

1. Debtor may use cash collateral only for ordinary operating expenses in the course of running its business. This authorization specifically includes the authority to issue payrolls on March 10, 2010 and March 17, 2010 which will include payment to all employees for wages and benefits earned in part pre-petition. Additionally, Debtor may use cash collateral for the payment of professional fees and administrative expenses incurred in connection with this bankruptcy case.

2. Debtor's authority to use cash collateral shall be conditioned on:

- Debtor granting the TRD post-petition, continuing and replacement liens on post-petition inventory, accounts, equipment, intangibles, proceeds and profits to

secure the use of cash collateral. The lien is effective upon entry of this Order. No additional filing or recording of notice is required to perfect TRD's post-petition replacement liens.

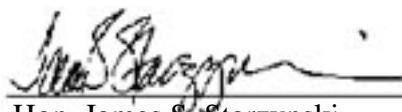
b. Debtor making adequate protection payments to the TRD in the amount of \$12,519.94 per month, payable on the 20th of each month. The first of such payments will be due on April 20, 2010.

c. Debtor reporting and paying all State Taxes incurred during the administration of this case on a timely basis.

3. The Debtor's failure to comply with the provisions of Sub-Paragraphs 2 (b) and (c) above shall constitute an event of default. In the event the Debtor does not cure an event of default within five (5) days after written notice transmitted to Debtor's Counsel electronically, the Debtor's permission to use cash collateral shall terminate.

4. This order does not constitute the waiver or preclusion of any rights or claims of Cash Collateral Claimants to seek further relief with respect to the subject matter hereof, or with respect to any other matter, and that it likewise shall not constitute the waiver or preclusion of any rights of the Debtor.

5. The Debtor will promptly give the fourteen (14) day notice as required by Rule 4001(d). Any objections to this order will be heard on an expedited basis. In the absence of any timely filed objections, this interim order will become a final order.



Hon. James S. Starzynski

Entered on Docket Date: March 4, 2010

Prepared and Submitted by:

Cuddy & McCarthy, LLP
Submitted via e-mail
Daniel J. Behles, of Counsel
Attorney for Debtor
7770 Jefferson NE, #305
Albuquerque, NM 87114
505-888-1335 – fax 505-888-1369
email: Dan@Behles.com

APPROVED BY:

New Mexico Taxation and Revenue Department

/s/ Jim Jacobsen

Approved by telephone 3/4/2010
Office of the Attorney General
111 Lomas Blvd NW # 300
Albuquerque, NM 87102-2368
jjacobsen@nmag.gov

COPY OF ORDER TO:

Ron Andazola
Office of the United States Trustee
PO Box 608
Albuquerque, NM 87103-0608
Ronald.Andazola@usdoj.gov

Tortilla, Inc. Cash Flow